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China Report

POLITICAL, SOCIOLOGICAL AND MILITARY AFFAIRS

PRC STATE COUNCIL BULLETIN

No 8, 10 APRIL 1986

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No 8, 10 APRIL 1986

Beijing ZHONGHUA RENMIN GONGHEGUO GUOWUYUAN GONGBAO [PRC STATE COUNCIL BULLETIN] in Chinese 10 April 86

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CONTENTS

PRC Presidential Decree No 36 (19 March 1986) [Not translated]

Mineral Resources Law of the PRC (Adopted on 19 March 1986 at the 15th Session of the Standing Committee of the 6th NPC) [Text processed in FBIS-CHI-86-057, 25 March 1986 p K19]

State Council Request for the Deliberation of the 'Mineral Resources Law of the PRC (Draft)' (9 March 1986) [Not translated]

NPC Standing Committee resolution on Ratifying the Consular Treaty Between the PRC and the DPRK (Adopted on 19 March 1986) [Text processed in FBIS-CHI-86-054, 20 March 1986 p K2]

Consular Treaty Between the PRC and the DPRK (26 November 1985)..... 1

State Council Request for the Deliberation of the 'Consular Treaty Between the PRC and the DPRK' (9 March 1986)..... 19

Premier Zhao Ziyang's Speech at the Chinese People's Rally for World Peace (21 March 1986) [Text published in FBIS-CHI-86-055, 21 March 1986 p A2]

State Council Regulations Governing Several Questions on Further Promoting Lateral Economic Ties (Promulgated on 23 March 1986) [Text published in FBIS-CHI-86-062, 1 April 1986 p K1]

State Council Circular on the Approval and Circulation of the State Education Commission Report on Improving the Work of Job Assignment for 1986 Graduates of Institutions of Higher Learning (15 March 1986) [Summary published in FBIS-CHI-86-061, 31 March 1986 p K22]

State Education Commission Report on Improving the Work of Job Assignment for 1986 Graduates of Institutions of Higher Learning (Summary) [Summary published in FBIS-CHI-86-061, 31 March 1986 p K22]

State Council Circular on China's Participation in the Asian Development Bank (3 March 1986)..... 20

Agreement on the Establishment of the Asian Development Bank (Excerpt) (4 December 1965)..... 21

Resolution No 176 of the Asian Development Bank Board of Governors (17 February 1986)..... 24

Premier Zhao Ziyang's Message to the Chairman of the UN Special Committee Against Apartheid (21 March 1986)..... 30

Foreign Ministry Spokesman's Statement on the Democratic Kampuchean Government's Proposal of 17 March for a Political Settlement of the Cambodian Question (19 March 1986) [Summary previously published]

/6091

CONSULAR TREATY BETWEEN PRC, DPRK

Beijing PRC STATE COUNCIL BULLETIN in Chinese No 8, 10 Apr 86 pp 203-218

[Consular Treaty Between the PRC and the DPRK (26 November 1985)]

[Text] The PRC and the DPRK, desirous of further promoting the friendly relations between the two countries on the basis of the principles of mutual respect for sovereignty, noninterference in each other's internal affairs, equality, and mutual benefit, and strengthening consular relations between them, have resolved to sign this treaty and have conferred and agreed upon the following articles:

Chapter I Definitions

Article 1. Definitions

For the purpose of this treaty, the meaning of the following terms shall be as follows:

- i) "Consulates" means consulate general, consulate, vice consulate, or consular agency;
- ii) "Consular district" means the district established in the receiving country for the consulate to execute its consular duties;
- iii) "Head of the consulate" means the consul general, consul, vice consul, or consular agent assigned by the appointing country to head a consulate;
- iv) "Consular officers" means the personnel, including the head of the consulate, assigned by the appointing country to carry out consular functions;
- v) "Consular staff" means personnel engaged in executive, technical and service work in a consulate;
- vi) "Consular members" means consular officers and consular staff;
- vii) "Dependents" means the spouses of consular members and minor children residing with them;

viii) "Consular premises" means the buildings, or parts thereof, and the land on which they stand, regardless of ownership;

ix) "Consular archives" means all documents, credentials, letters, and telegraphic correspondence, plain code or cipher, chops, seals, tapes, video tapes, films, photographs, and account books, as well as the appliances used for their safekeeping or protection;

x) "Vessels of the appointing country" means vessels registered in the appointing country and flying the national flag of the appointing country, but excluding military vessels;

xi) "Aircraft of the appointing country" means aircraft registered in the appointing country and bearing the national emblem of the appointing country.

Chapter II The Establishment of the Consulate and the Appointment of Consular Members

Article 2. The Establishment of the Consulate

1. The establishment of the consulate in the territory of the receiving country is subject to the consent of that country.
2. The location, grade and consular district of the consulate, and changes thereof, shall be determined by agreement between the appointing country and the receiving country.

Article 3. The Appointment and Acceptance of the Head of the Consulate

1. The appointing country shall, before appointing the head of the consulate, present the consular commission of the head of the consulate to the receiving country through diplomatic channels. The consular commission shall indicate the name in full and the functions of the head of the consulate, and the location, grade and consular district of the consulate.
2. The receiving country shall, upon receiving the consular commission of the head of the consulate, issue the exequatur and have it ratified accordingly. The receiving country is not obliged to give reasons should it decide to refuse ratification.
3. The head of the consulate shall start functioning after the issue of the exequatur by the receiving country. Prior to this, the head of the consulate may carry on his functions in a temporary capacity with the consent of the receiving country.
4. The receiving country shall, after the issue of the exequatur or the granting of permission for the head of a consulate to carry out his functions in a temporary capacity, immediately communicate its decision to the competent

authorities of the consular district, and take all the necessary measures to ensure that the head of the consulate can carry out his functions and enjoy all the rights, convenience, privileges and immunities referred to in this treaty.

5. In the event the head of a consulate is unable to perform his functions or is absent from his post, the appointing country may assign a consular officer from the same or another consulate in the receiving country, or an officer of its diplomatic mission in the receiving country, as acting head of the consulate. The full name and previous functions of the acting head of the consulate shall be communicated in advance to the receiving country by the appointing country.

The acting head of the consulate shall enjoy all the rights, conveniences, privileges, and immunities accorded by this treaty to the head of the consulate.

Article 4. Notification of Arrival and Departure

The head of the consulate shall promptly communicate in writing to the receiving country:

- i) The full name and functions of its consular members, their arrival, final departure, or termination of duties, and any change in their status during their term of office; and
- ii) The full name and nationality of the dependents of its consular members, their arrival and departure, and facts of any person becoming, or ceasing to be, a dependent of a consular member.

Article 5. The Nationality of Consular Members

1. Consular officers can only be citizens of the appointing country, and cannot be citizens of the appointing country who reside permanently in the receiving country.
2. Consular staff shall be citizens of the appointing country or citizens of the receiving country.

Article 6. The Termination of the Duties of Consular Members

1. The duties of a consular member shall be terminated when:
 - i) The appointing country notifies the receiving country that the duties of the said member have been terminated;
 - ii) The receiving country notifies the appointing country that a certain consular member has been declared persona non grata. In such an event, the appointing country shall recall that member or terminate his duties in the consulate.

2. In the case of Item ii), Clause 1 of this article, the receiving country shall not be obliged to explain to the appointing country; should the appointing country refuse to fulfill the obligations referred to in Item ii), Clause 1 of this article, or not do so promptly, the receiving country has the right not to recognize that person as a consular member and cancel his exequatur or identification paper.

Chapter III Consular Functions

Article 7. General Consular Functions

The general functions of a consulate are:

- i) To protect the rights and interests of their country and of the citizens and corporate bodies of the appointing country, and to provide assistance to the citizens and corporate bodies of the appointing country;
- ii) To further the development of economic, trade, cultural, educational, technological, and tourist relations between the appointing country and the receiving country, and to promote relations of friendship and cooperation between the two countries in other fields;
- iii) To find out, by all legitimate means, information regarding the economic, trade, cultural, educational, technological, and tourist developments of the receiving country, and to report the findings to the appointing country;
- iv) To perform other functions as authorized by the appointing country, provided that they are not prohibited by the laws of the receiving country, or opposed to by the receiving country.

Article 8. Concerning the Application for and Registration of Nationality

1. Consular officers have the right to perform the following functions in respect of the acceptance of applications for and the registration of nationality:

- i) To accept, in compliance with the laws of the receiving country, applications connected with nationality;
- ii) To register citizens of the appointing country;
- iii) To register the births and deaths of citizens of the appointing country, and to accept notices or documents concerned;
- iv) To register marriages and divorces between citizens of the appointing state, and to issue marriage certificates, in accordance with the legislation of the appointing country, provided that this does not go contrary to the laws of the receiving country.

2. The provisions of Clause 1 of this article shall not exempt the parties concerned from their obligation to abide by the legislation of the receiving country.

Article 9. The Issuance of Passports and Visas

Consular officers have the right to perform the following functions in respect of the issuance of passports and visas:

- i) To issue passports or other travel documents to citizens of the appointing country, and to certify or rescind such documents;
- ii) To issue visas or other documents to persons traveling to or through the appointing country, and to offer certification.

Article 10. Public Notarization and Legalization

1. Consular officers have the right to perform the following functions in respect of public notarization and legalization in accordance with the legislation of the appointing country:

- i) To draw up documents for use in the appointing country at the request of individuals of any nationality;
- ii) To draw up documents for use within or outside the territory of the receiving country at the request of citizens or corporate bodies of the appointing country;
- iii) To certify copies and translations of documents written in the official language of the appointing country or the receiving country;
- iv) To perform other public notary functions as authorized by the appointing country, provided that the receiving country does not object;
- v) To certify the signatures and seals on documents issued by the competent authorities of the appointing country or the receiving country.

2. Documents, and copies, excerpts, and translations of documents notarized by consular officers, and documents legalized by them, shall be considered official documents or officially certified documents. Such documents shall have to comply with the laws of the receiving country if they are used in the receiving country.

Article 11. Liaising With Citizens of the Appointing Country

1. Consular officers have the right to liaise with and receive citizens of the appointing country in the consular district. The receiving country shall not restrict citizens of the appointing country from liaising with and entering the consulate.

2. In the event of the arrest or detention of a citizen of the appointing country in the consular district, the competent authorities of the receiving country shall notify the consulate within 7 days of the arrest or detention of that citizen.

3. Consular officers have the right to visit citizens of the appointing country arrested, held in custody, or imprisoned, to talk to or communicate with them, and to provide them with legal aid. The competent authorities of the receiving country shall make arrangements for the visit within 3 days of the submission of the request by the consular officers, and provide opportunities for regular subsequent visits.

4. The competent authorities of the receiving country shall inform citizens of the appointing country arrested, held in custody, or imprisoned of their rights referred to in clauses 2 and 3 of this article.

5. Consular officers shall, when exercising their rights as referred to in this article, abide by the relevant legislation of the receiving country.

Article 12. Guardianship or Curatorship

1. The competent authorities of the receiving country shall notify the consulate should guardians or curators need to be appointed for minors or not fully able-bodied citizens of the appointing country in the consular district.

2. Insofar as the legislation of the receiving country permits, consular officers have the right to protect the interests of minors or not fully able-bodied citizens of the appointing country and, where necessary, recommend or appoint guardians or curators for them and supervise their guardianship or curatorship.

Article 13. Representing the Citizens and Corporate Bodies of the Appointing Country

1. In the event a citizen or corporate body of the appointing country is unable to protect in good time his or its rights and interests due to absence from the place in question or other reasons, consular officers may represent the said citizen or corporate body before the court or other institution of the receiving country, or make arrangements to appoint a suitable representative.

2. Consular officers shall abide by the legislation of the receiving country when performing the duties referred to in Clause 1 of this article.

Article 14. Giving Assistance to Citizens and Corporate Bodies of the Appointing Country

1. Consular officers have the right to inquire into the conditions of citizens and corporate bodies of the appointing country in the receiving country, and to give them the necessary assistance.

2. Consular officers have the right to request assistance from the competent authorities of the receiving country in locating the whereabouts of citizens of the appointing country. The competent authorities of the receiving country shall do all in their power to supply the necessary information.

3. Consular officers shall perform in the receiving country the duty of educating citizens of the appointing country and helping them to abide by the laws of the receiving country.

4. In the event of the death, disappearance, serious injury, and other contingencies of citizens of the appointing country, the competent authorities of the receiving country shall notify the consulate forthwith. Consular officers have the right to request the competent authorities of the receiving country to supply information regarding the contingency concerned, and take the necessary measures to protect the interests of the victim.

5. Provided that they conform to the legislation of the receiving country, consular officers have the right to accept and safeguard temporarily the documents, money, and valuables of citizens of the appointing country.

Article 15. Measures for the Protection of Estates

1. Upon learning of the death of a citizen of the appointing country, the competent authorities of the receiving country shall notify his consulate forthwith, and supply, free of charge, at the request of the consulate, copies of the certificate of death or other documents certifying his death.

2. If a citizen of the appointing country who is a permanent resident of the receiving country dies and leaves behind an estate in the receiving country, but does not have a successor or executor in the receiving country, the competent authorities of the receiving country shall notify the consulate forthwith.

3. Consular officers may request permission to be present when the competent authorities of the receiving country accept for safekeeping estates referred to in Clause 2 of this article.

4. If a citizen of the appointing country is entitled to inherit or receive, as successor or legatee, the estate of a deceased citizen of any nationality in the receiving country, but is himself not in the receiving country, the competent authorities of the receiving country shall notify the consulate of such an inheritance or legacy.

5. Where a citizen or corporate body has, or claims to have, the right to inherit a certain estate in the territory of the receiving country, but cannot be present personally or by proxy at the legal proceedings over the estate, consular officers may, directly or through their agents, represent that citizen or corporate body before the court or other institutions of the receiving country.

6. Consular officers have the right to accept an estate or legacy in the receiving country due to a citizen of the appointing country who is not a permanent resident of the receiving country, and turn over the said estate to that citizen.

7. If a citizen of the appointing country who is not a permanent resident of the receiving country dies in the receiving country, and he does not have any relative or proxy in the receiving country, consular officers have the right to the immediate safekeeping of all the money, documents, and personal belongings of that citizen and hand these over to the successor or executor of that citizen, or to whoever is authorized to accept the property.

8. Consular officers shall abide by the laws and regulations of the receiving country when performing the functions referred to in clauses 5, 6 and 7 of this article.

Article 16. Giving Assistance to Vessels of the Appointing Country

1. Consular officers have the right to give assistance to vessels of the appointing country in the inland waters, ports, territorial waters, or other places of berth of the receiving country, and to their captains and crew members, and have the right:

i) To board a vessel to question its captain or crew members, and hear their reports concerning the vessel, its cargo and voyage;

ii) To investigate incidents that took place during the voyage of a vessel, provided that this does not obstruct the power of the competent authorities of the receiving country;

iii) To settle disputes between the captain and the crew, including disputes over wages and labor contracts, in accordance with the legislation of the appointing country;

iv) To receive calls from captains and crew members and, where necessary, to arrange for their medical treatment or return to their own countries;

v) To accept, examine, draw up, sign, or authenticate documents relating to vessels;

vi) To perform other functions relating to vessels as authorized by the competent authorities of the appointing country.

2. Consular officers shall abide by the legislation of the receiving country when performing the functions referred to in this article, and may request the relevant authorities of the receiving country for assistance.

**Article 17. The Protection of Vessels of the Appointing
Country Subject to Coercive Measures**

1. Should the courts or other competent bodies of the receiving country desire to subject a vessel of the appointing country to coercive measures or to carry out important investigations on board, it must notify the consulate in advance so that the consular officers or their representatives can be present when action is taken. In case of an emergency where notice cannot be served in advance, the competent authorities of the receiving state shall notify the consulate immediately after action has been taken, and provide all the details regarding the action taken.
2. The provisions of Clause 1 of this article shall apply to the same action taken against the captain and the crew on shore by the competent authorities of the receiving country.
3. The provisions of clauses 1 and 2 of this article shall not apply to routine checks conducted by the competent authorities of the receiving country on matters of customs, harbor administration, quarantine, or immigration, or to actions taken by the competent authorities of the receiving country for the safeguarding of maritime security or for the prevention of the pollution of territorial waters.
4. Unless requested by, or agreed to, by the captain or consular officers, the competent authorities of the receiving country may not intervene in the internal affairs on board the vessel when peace, security, and public order have not been disrupted.

**Article 18. Giving Assistance to Damaged
Vessels of the Appointing Country**

1. If a vessel of the appointing country is involved in a major maritime accident, such as sinking and running aground, in the inland waters, territorial waters, or adjacent seas of the receiving country, the competent authorities of the receiving country shall notify the consulate accordingly, and inform the consulate of measures taken to rescue those on board, the vessel, the cargo, and other property.
2. Consular officers have the right to take measures to render assistance to the vessel, crew, and passengers of the vessel of the appointing country involved in the accident, and may request assistance from the authorities of the receiving country for this purpose.
3. If the vessel involved in the accident, or items belonging to the vessel, or the cargo of the vessel, is/are left along the coast of the receiving country, or has/have been shipped to a port of the receiving country, and if the captain, owner, shipping agent and underwriter concerned are not present or are unable to take measures to keep or handle them, the competent authorities of the receiving state shall notify the consulate accordingly. Consular officers may take appropriate measures on behalf of the ship owner.

4. If the vessel of the appointing country involved in the accident and its cargo and foodstuff are not disposed of in the territory of the receiving country, the receiving country shall not levy tariff or similar charges.

Article 19. Boarding Vessels Not Belonging to the Appointing Country

With the consent of the captain, and in compliance with the harbor regulations of the receiving country, consular officers or their representatives may board vessels not belonging to the appointing country that are heading to a port of the appointing country or to other places of berth.

Article 20. Aircraft of the Appointing Country

The provisions of this treaty in respect of vessels of the appointing country shall also apply to aircraft of the appointing country. However, this may not go contrary to the provisions of existing bilateral agreements between the receiving country and the appointing country or of multilateral agreements in which both countries are signatories.

Article 21. The Delivery of Juridical Documents

Provided that they do not violate the legislation of the receiving country, consular officers have the right to obtain testimony from, and deliver juridical and other documents to, citizens or corporate bodies of the appointing country.

Article 22. The Jurisdiction of Consular Functions

Consular officers can only perform their consular functions in the consular district. Subject to the approval of the receiving country, consular officers may also perform their functions outside the consular district.

Article 23. Liaison With the Authorities of the Receiving Country

When performing their functions, consular officers may liaise with the following authorities:

- i) Local competent authorities in the consular district;
- ii) Local competent authorities outside the consular district, but this is subject to the approval of the receiving country;
- iii) Central competent authorities of the receiving country, but only insofar as the legislation and the usual practice of the receiving country permit.

Article 24. The Performing of Consular Functions by the Consulate

1. The consulate of the appointing country in the receiving country may perform consular functions. Diplomatic officials assigned to perform consular functions shall enjoy the rights, conveniences, privileges, and immunities accorded to consular officers by this treaty.
2. The consulate of the appointing country shall communicate to the Foreign Ministry of the receiving country the full name and functions of diplomatic officials assigned to perform consular functions.
3. Diplomatic officials assigned to perform consular functions shall continue to enjoy the rights, conveniences, privileges, and immunities accorded to diplomatic officials.

Chapter IV Convenience, Privileges, and Immunity

Article 25. The Provision of Conveniences to the Consulate

The receiving country shall provide ample convenience for the consulate to perform its own functions.

Article 26. The Acquisition of Consular Premises and Residence

1. Insofar as the legislation of the receiving country permits, the appointing country or its agent has the right to purchase, lease, build or acquire by other means buildings or parts thereof and the land on which they stand for use as the premises of the consulate and residence of its members, but this provision does not apply to the residence of consular staff who are citizens of the receiving country, or citizens of the appointing country permanently residing in the receiving country.
2. The receiving country shall assist the appointing country in the acquisition of consular premises and, where necessary, assist the appointing country in acquiring suitable residences for its consular members.

Article 27. The Use of the National Flag and the National Emblem

1. The appointing country has the right to hang the national emblem and the signboard bearing its name, in the languages of the appointing country and the receiving country, on the premises of the consulate.
2. The appointing country has the right to fly the national flag on the premises of the consulate, the residence of the head of the consulate, and the vehicle used by the head of the consulate in its official duties.

**Article 28. The Inviolability of the Premises of the
Consulate and the Residences of Consular Officers**

1. The premises of the consulate shall be inviolable. Without the consent of the head of the consulate or the head of the embassy of the appointing country, or a person designated by either one of these two persons, the authorities of the receiving country may not enter the premises of the consulate.
2. The receiving country has the special responsibility to take all necessary measures to protect the premises of the consulate from being violated or damaged, and to prevent acts that may disturb the tranquillity or impair the dignity of the consulate.
3. The premises of the consulate and the equipment, property, and vehicles of the consulate shall be exempted from requisition. If the receiving country must carry out requisition due to defense or public reasons, the receiving country shall take all measures to prevent causing the consulate to stop its functions, and to properly compensate the appointing country in good time.
4. The premises of the consulate may not be used for any purpose not compatible with the performance of consular functions.
5. The provisions of Clause 1 of this article shall also apply to the residences of consular officers.

Article 29. The Inviolability of Consular Archives

Consular archives shall be inviolable at any time and place.

Article 30. The Freedom of Communication

1. The receiving country shall permit and safeguard the free transmission of all official communications of the consulate. A consulate may employ all suitable means, including telegrams in plain codes or cipher, diplomatic or consular courier, and diplomatic or consular pouch, to communicate with the government of the appointing country, the embassy of the appointing country and other consulates of the appointing country. However, a consulate may install and use a radio transmitter only with the consent of the receiving country.
2. The official documents, letters, and telegraphic correspondence, and other official mail of the consulate shall be inviolable. Consular pouches may not be opened or withheld. Consular pouches must bear the symbol of the Foreign Ministry for purposes of identification, and may only carry official papers, materials, and stationery. If the competent authorities of the receiving country have full proof that items other than those referred to in the above are carried in a pouch, they shall request the presence of an authorized agent when the pouch is opened. The pouch shall be returned to the place of dispatch should this request be refused.

3. Consular couriers may only be citizens of the appointing country, and they may not be citizens of the appointing country residing permanently in the receiving country. Consular couriers shall bear official papers of identification. Consular couriers enjoy the same rights, conveniences, privileges, and immunities as diplomatic couriers in the territory of the receiving country.

4. Consular pouches may be entrusted to the captain of an aircraft of the appointing country or the captain of a vessel of the appointing country for delivery. However, that captain shall have to carry official papers indicating the number of pouches, but he may not be considered a consular courier. After it has been agreed upon by the authorities concerned of the receiving country, consular officers may directly and freely handle consular pouches with the captains of aircraft or vessels.

Article 31. Consular Charges and Fees

1. A consulate may collect in the territory of the receiving country consular charges and fees prescribed by the legislation of the appointing country.
2. Revenue from charges and fees referred to in Clause 1 of this article and receipts thereof shall be exempt from all levies in the receiving country.
3. The receiving country shall permit the repatriation of revenue from charges and fees referred to in Clause 1 of this article by consular officers.

Article 32. Freedom of Movement

The receiving country shall ensure the freedom of consular officers and their dependents to move about and travel in its territory, except to those places where entry is prohibited or restricted due to national security reasons.

Article 33. The Inviolability of Consular Officers

Consular officers shall be inviolable and shall be exempt from arrest or detention. The receiving country shall accord consular officers proper respect, and take all appropriate measures to prevent the violation of their person, freedom, and respect.

Article 34. The Immunity of Jurisdiction

1. Consular officers shall not be subject to the jurisdiction of the juridical or executive organs of the receiving country, except in the following civil actions:
 - 1) A lawsuit arising from a contract concluded without indicating one's capacity as a representative of the appointing country;

- ii) A lawsuit involving claims for damage by a third party in an act of damage caused by one's means of transport in the receiving country;
 - iii) A lawsuit involving private immovable property in the receiving country, excluding immovable property held by one in his capacity as a representative of the appointing country for use by the consulate;
 - iv) A lawsuit involving personal inheritance;
 - v) A lawsuit involving any professional or commercial activity carried out by one outside his scope of duties in the receiving country.
2. The receiving country shall not infringe upon the inviolability of the person and the residence of the consular officer should measures be taken in connection with the lawsuits referred to in Clause 1 of this article.
3. The actions of a consular officer in performing his official duties shall not be subject to the jurisdiction of the juridical or executive organs of the receiving country, the civil actions referred to in items i) and ii) of Clause 1 of this article notwithstanding.
4. The receiving country shall notify the head of the consulate accordingly in the event of arrest or detention of consular staff.

Article 35. The Obligation To Testify

1. Consular officers shall not be obliged to serve as witness.
2. Consular staff may be invited to appear and testify in juridical or executive proceedings in the receiving country. Subject to Clause 3 of this article, consular staff may not refuse to testify.
3. Consular staff shall not be obliged to testify on matters pertaining to their official duties, or to furnish official papers or documents concerned. Consular staff have the right to refuse to give testimony as judges of the laws of the appointing country.
4. When requesting consular staff to testify, the competent authorities of the receiving country shall avoid obstructing the carrying out of their official duties. Where possible, the competent authorities of the receiving country shall obtain testimony in the residence of the consular staff or in the premises of the consulate, or accept written statements.

Article 36. The Exemption of Services and Obligations

Consular members shall be exempted from any form of personal service, public service, and military service. They shall also be exempted from all obligations prescribed in the legislation of the receiving country in respect of the registration of foreign nationals and resident permits.

**Article 37. The Exemption of Tax on Movable
and Immovable Property**

The receiving country shall exempt all taxes and levies in respect of the following:

- i) The premises of the consulate and the residence of consular members bought, leased, or built by the appointing country or its agent, and relevant transactions or deeds;
- ii) Consular equipment and means of transport held, leased, or taken possession of by other means for consular use.

Article 38. The Exemption of Tax on Consular Members

Consular members shall be exempt from all state, regional or municipal taxes and levies imposed by the receiving country on individuals and property, except:

- i) Indirect tax which is usually included in the price of commodities or service;
- ii) Taxes and levies on private immovable property in the territory of the receiving country, but this does not apply to the provisions of Item i) under Clause 1 of Article 37 of this treaty;
- iii) Legacy tax, inheritance tax, succession tax, or gift tax levied in the receiving country, but this does not apply to the provisions of Article 40 of this treaty;
- iv) Income tax on personal earnings derived outside the scope of official duties in the receiving country;
- v) Fees charged for the provision of designated services;
- vi) Registration fees, court fees or record fees, mortgage tax and stamp tax, but excluding the provisions of Article 37 of this treaty.

Article 39. Exemption From Tariff and Search

1. In accordance with its legislation, the receiving country shall permit the import and export of the following articles, and exempt them from all tariffs, with the exception of safekeeping, shipment, and similar service fees:

- i) Articles and means of transport for the use of the consulate;
- ii) Personal articles of consular officers;
- iii) Personal articles, including household equipment and articles of daily use, of consular staff on first arrival.

2. Articles referred to in items ii) and iii) of Clause 1 of this article may not exceed the amount directly needed by the personnel concerned.

3. The personal luggage of consular officers shall be exempt from search. The competent authorities of the receiving country may only carry out search when there is conclusive evidence that the luggage contains articles not covered in Item ii), Clause 1 of this article, or articles prohibited from import or export by the legislation of the receiving country, or articles subject to the quarantine law. The search must be conducted in the presence of either the consular officer concerned or his representative.

Article 40. The Estate of Consular Members

In the event of the death of a consular member or his dependent, the receiving country shall:

i) Permit the shipment of the movable property of the deceased out of the territory, but this does not apply to articles obtained by the deceased in the territory of the receiving country which are prohibited from export at the time of his death;

ii) Exempt the movable property of the deceased from legacy tax and all relevant taxes and levies.

Article 41. The Privileges and Immunities of Dependents

Subject to the provisions of Clause 2, Article 42 of this treaty, the dependents of consular officers and consular staff shall enjoy the privileges and immunities enjoyed by consular officers and consular staff in accordance with the provisions of this article.

Article 42. Personnel Not Entitled to Privileges and Immunities

1. Consular staff who are citizens of the receiving country or citizens of the appointing country who permanently reside in the receiving country, or who have private compensated employment in the receiving country, shall not be entitled to the privileges and immunities provided for by this treaty, but this does not apply to the provisions of Clause 3 of Article 35.

2. Dependents of consular staff who are citizens of the receiving country or citizens of the appointing country who permanently reside in the receiving country, or who have private compensated employment in the receiving country, shall not be entitled to the privileges and immunities provided for by this treaty.

**Article 43. The Commencement and Termination
of Privileges and Immunities**

1. Consular members shall begin to enjoy the privileges and immunities provided for in this treaty from the time they set foot in the territory of the receiving country on their way to take up office; those already in the territory of the receiving country shall begin to enjoy these from the time they assume consular functions.
2. Dependents of consular members shall begin to enjoy the privileges and immunities provided for by this treaty from the time the consular members concerned begin to enjoy their privileges and immunities, or they themselves set foot in the territory of the receiving country, or they themselves become dependents of consular members.
3. If the functions of a consular member have been terminated, the privileges and immunities enjoyed by him and his dependents shall terminate on their departure from the territory of the receiving country or at the end of a reasonable period of time necessary to arrange the departure. If the dependent of a consular member ceases to be his dependent, the privileges and immunities enjoyed by that person shall terminate forthwith; but if that person plans to leave the receiving country within a reasonable time, the privileges and immunities enjoyed may be extended to the time of departure.
4. In the event of the death of a consular member, the privileges and immunities enjoyed by his dependents shall terminate at the time of their departure from the receiving country or at the end of a reasonable period of time necessary to arrange the departure.

Article 44. The Waiving of Privileges and Immunities

1. The appointing country may waive any of the privileges and immunities referred to in articles 34 and 35 of this treaty for personnel concerned. However, each waiver shall have to be explicitly indicated and communicated in writing to the receiving country.
2. If a person entitled to immunities from jurisdiction in accordance with the provisions of this treaty files a suit of his own accord on matters which should have been exempt from jurisdiction, he may not ask for immunity from jurisdiction in respect of a countercharge directly related to the original charge.
3. The waiving of immunities in civil or executive proceedings may not be construed as the tacit waiving of immunity from the execution of juridical judgment. The waiving of immunities from the execution of juridical judgment must be notified in writing separately.

**Article 45. Respect for the Legislation
of the Receiving Country**

1. Personnel who enjoy privileges and immunity under this treaty have the obligation to respect the legislation of the receiving country, provided that this does not infringe upon their privileges and immunity. They also have the obligation not to intervene in the internal affairs of the receiving country.
2. Consular members who are citizens of the appointing country may not engage in other professions or commercial activities outside of their official duties.
3. The means of transport owned by the consulate and by consular members and their dependents shall be subject to the insurance regulations of the receiving country.

**Chapter V
Final Provisions**

**Article 46. Ratification, Entry Into Force
and Termination**

1. After this treaty has been ratified, the instruments of ratification shall be exchanged in Pyongyang. This treaty shall enter into force on the 30th day after the date on which the instruments of ratification have been exchanged.
2. This treaty shall remain in force until 6 months after a contracting party informs the other party in writing that it wishes to terminate this treaty.

Done at Beijing on 26 November 1985, in duplicate in the Chinese and Korean languages, both texts being equally authentic.

Plenipotentiary Representative
of the PRC,
Wu Xueqian (signed)

Plenipotentiary Representative
of the DPRK,
Kim Yong-nam (signed)

/6091
CSO: 4005/335

STATE COUNCIL ASKS FOR DELIBERATION OF CONSULAR PACT WITH DPRK

Beijing PRC STATE COUNCIL BULLETIN in Chinese No 8, 10 Apr 86 p 218

[State Council Request for the Deliberation of the "Consular Treaty Between the PRC and the DPRK" (9 March 1986)]

[Text] The Standing Committee of the National People's Congress:

The "Consular Treaty Between the PRC and the DRPK" was signed by Wu Xueqian, state councilor and foreign minister, and Kim Yong-nam, vice premier of the State Council and foreign minister of the DPRK, on behalf of their respective governments on 26 November 1985.

The "Consular Treaty Between the PRC and the DPRK" was concluded by the Chinese and Korean sides through friendly negotiations on the basis of their respective drafts. The provisions of the said treaty have been found to accord with the present laws, rules, and policies of China and with the actual conditions in China and Korea.

The DPRK is our friendly neighbor. The friendly relations between the two countries have been developing. The signing of the consular treaty between the two countries will further promote the development of consular relations and economic, trade, cultural, technological, and other relations between the two countries.

The State Council has approved the "Consular Treaty Between the PRC and the DPRK," which is hereby submitted for deliberation.

Zhao Ziyang, Premier of the
State Council,
9 March 1986

/6091
CSO: 4005/335

CIRCULAR ON PRC PARTICIPATION IN ASIAN DEVELOPMENT BANK

Beijing PRC STATE COUNCIL BULLETIN in Chinese No 8, 10 Apr 86 p 230

[State Council Circular on China's Participation in the Asian Development Bank (3 March 1986)]

(Guofa [0948 4099] (1986) No 28)

[Text] Resolution No 176 of the Asian Development Bank Board of Governors on 17 February 1986 approved the application of the Government of the PRC to participate in the Asian Development Bank. Foreign Minister Wu Xueqian signed the acceptance for the "Agreement Establishing the Asian Development Bank" and Resolution No 176 of the Asian Development Bank Board of Governors on behalf of the Government of the PRC. From the date the Asian Development Bank affirmed the completion of all entry procedures on our part, the PRC shall formally become a member of the Asian Development Bank, and the above-mentioned "Agreement" and Resolution shall become legally binding on the PRC. We hereby submit to you Articles 48 to 58 of the "Agreement Establishing the Asian Development Bank" and Resolution No 176 of the Asian Development Bank Board of Governors for implementation.

/6091

CSO: 4005/335

EXCERPT OF PACT ESTABLISHING ASIAN DEVELOPMENT BANK

Beijing PRC STATE COUNCIL BULLETIN in Chinese No 8, 10 Apr 86 pp 231-233

[Agreement on Establishing the Asian Development Bank (Excerpt) (4 December 1965)]

[Text]

**Chapter VIII
Status, Immunities, Exemptions and Privileges**

Article 48. Purpose of Chapter

To enable the bank effectively to fulfill its purpose and carry out the functions entrusted to it, the status, immunities, exemptions, and privileges set forth in this chapter shall be accorded to the bank in the territory of each member.

Article 49. Legal Status

The bank shall possess full juridical personality and, in particular, full capacity:

- i) to contract;
- ii) to acquire and dispose of immovable and movable property; and
- iii) to institute legal proceedings.

Article 50. Immunity From Juridical Proceedings

1. The bank shall enjoy immunity from every form of legal process, except in cases arising out of or in connection with the exercise of its powers to borrow money, to guarantee obligations, or to buy and sell or underwrite the sale of securities, in which cases actions may be brought against the bank in a court of competent jurisdiction in the territory of a country in which the bank has its principal or a branch office, or has appointed an agent for the purpose of accepting service or notice of process, or has issued or guaranteed securities.

2. Notwithstanding the provisions of paragraph 1 of this article, no action shall be brought against the bank by any member, or by any agency or instrumentality of a member, or by any entity or person directly or indirectly acting for or deriving claims from a member or from any agency or instrumentality of a member. Members shall have recourse to such special procedures for the settlement of controversies between the bank and its members as may be prescribed in this agreement, in the bylaws and regulations of the bank, or in contracts entered into with the bank.

3. Property and assets of the bank shall, wheresoever located and by whomsoever held, be immune from all forms of seizure, attachment, or execution before the delivery of final judgment against the bank.

Article 51. Immunity of Assets

Property and assets of the bank, wheresoever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation, or any other form of taking or foreclosure by executive or legislative action.

Article 52. Immunity of Archives

The archives of the bank and, in general, all documents belonging to it, or held by it, shall be inviolable, wherever held.

Article 53. Freedom of Assets From Restrictions

To the extent necessary to carry out the purpose and functions of the bank effectively, and subject to the provisions of this agreement, all property and assets of the bank shall be free from restrictions, regulations, controls, and moratoria of any nature.

Article 54. Privilege for Communications

Official communications of the bank shall be accorded by each member treatment not less favorable than that it accords to the official communications of any other member.

Article 55. Immunities and Privileges of Bank Personnel

All governors, directors, alternates, officers and employees of the bank, including experts performing missions for the bank:

- i) shall be immune from legal process with respect to acts performed by them in their official capacity, except when the bank waives the immunity;
- ii) where they are not local citizens or nationals, shall be accorded the same immunities from immigration restrictions, alien registration requirements, and national service obligations, and the same facilities as regards exchange regulations, as are accorded by members to the representatives, officials and employees of comparable rank of other members; and

iii) shall be granted the same treatment in respect of traveling facilities as is accorded by members to representatives, officials and employees of comparable rank of other members.

Article 56. Exemption From Taxation

1. The bank, its assets, property, income, and its operations and transactions, shall be exempt from all taxation and from all customs duties. The bank shall also be exempt from any obligation for the payment, withholding or collection of any tax or duty.

2. No tax shall be levied on, or in respect of, salaries and emoluments paid by the bank to directors, alternates, officers or employees of the bank, including experts performing missions for the bank, except where a member deposits with its instrument of ratification or acceptance a declaration that such member retains for itself and its political subdivisions the right to tax salaries and emoluments paid by the bank to citizens or nationals of such member.

3. No tax of any kind shall be levied on any obligation or security issued by the bank, including any dividend or interest thereon, by whomsoever held:

i) which discriminates against such obligation or security solely because it is issued by the bank; or

ii) if the sole jurisdictional basis for such taxation is the place or currency in which it is issued, made payable, or paid, or the location of any office or place of business maintained by the bank.

4. No tax of any kind shall be levied on any obligation or security guaranteed by the bank, including any dividend or interest thereon, by whomsoever held:

i) which discriminates against such obligation or security solely because it is guaranteed by the bank; or

ii) if the sole jurisdictional basis for such taxation is the location of any office or place of business maintained by the bank.

Article 57. Implementation

Each member, in accordance with its juridical system, shall promptly take such action as is necessary to make effective in its own territory the provisions set forth in this chapter and shall inform the bank of the action which it has taken on the matter.

Article 58. Waiver of Immunities, Exemptions, and Privileges

The bank at its discretion may waive any of the privileges, immunities, and exemptions conferred under this chapter in any case or instance, in such manner and upon such conditions as it may determine to be appropriate in the best interests of the bank.

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CSO: 4005/335

RESOLUTION NO 176 OF ASIAN DEVELOPMENT BANK BOARD

Beijing PRC STATE COUNCIL BULLETIN in Chinese No 8, 10 Apr 86 pp 233-238

[Resolution No 176 of the Asian Development Bank Board of Governors
(17 February 1986); capitalized passages published in boldface]

[Text] **MEMBERSHIP OF THE PRC AND INCREASE IN AUTHORIZED CAPITAL**

In view of the application submitted by the PRC to join the Asian Development Bank;

The PRC being a developing country in the region and being qualified for membership under Article 3 of the Bank Agreement; and

The need to increase the authorized capital of the bank for the subscription of shares by the PRC;

The Board of Governors of the bank hereby declares:

To accept the PRC as a member of the bank, subject to the following conditions, and to increase the authorized capital of the bank:

I. Acceptance of the PRC as Member

AMOUNT OF SUBSCRIPTION TO CAPITAL STOCK

1. The PRC shall subscribe 114,000 shares of the capital stock of the bank at \$10,000 per share, calculated at the gold content and relative purity of the dollar as of 31 January 1966, of which 13,691 shares shall be paid-in shares and 100,309 shares shall be callable shares.

THE PAYMENT OF PAID-IN SHARES

2. The paid-in shares of the PRC shall be made in four installments of one-quarter each. The method of payment is as follows:

1) The initial installment shall be paid on or before 15 April 1986 or at a later date as decided by the Board of Governors;

ii) The remaining three installments shall be made on the first, second and third anniversary of the PRC becoming a member of the bank.

3. At each payment, the PRC shall pay:

i) 43.46 percent in convertible currency; this payment, being payment referred to in Item i), Clause 2 of Article 6 of the Bank Agreement, shall be paid in full on due date;

ii) 56.54 percent in the currency of the PRC; this payment, being payment referred to in Item ii), Clause 2 of Article 6 of the Bank Agreement, shall be paid in full on due date.

4. Before a decision has been made in respect of the value of the capital stock of the bank, the PRC may choose one of the following methods for the determination of the value of the paid-in shares subscribed by the PRC:

i) At the current \$12,063.50 per share, or ii) at 10,000 SDR per share, the SDR to be converted at the rate of exchange on the day payment is due. When the question of determining the value of the capital stock of the bank has been resolved, payment made in accordance with the above provisions shall be readjusted.

5. Subject to other decisions of the Board of Governors, in order to ensure the payment of the subscription referred to in this resolution, the rate of exchange between currencies or between currencies and SDR shall be the rate of exchange used by the bank for the purpose of making conversion in its accounts on the day payment is due.

APPLICATION OF AGREEMENT

6. The Agreement of the Bank shall apply to the PRC.

PREREQUISITES FOR GAINING MEMBERSHIP

7. The PRC shall become a member of the bank only if it has fulfilled the following prerequisites for gaining membership before 15 April 1986, or at a later date as agreed upon by the Board of Governors:

i) The PRC shall deposit an acceptance declaring that, in accordance with the laws of the country, the PRC accepts the conditions laid down in the Bank Agreement and in this Resolution for Membership, and has taken all the necessary measures to ensure that the obligations laid down in the agreement and in this resolution for the PRC can be fulfilled.

ii) The PRC shall provide the bank with satisfactory proof to show that the acceptance referred to in subparagraph i) above has been duly signed and deposited in accordance with all the authorization involved.

iii) The PRC shall pay the initial installment of the subscribed capital stock referred to in paragraphs 2, 3, 4, and 5 of this resolution.

ENTRY INTO FORCE OF MEMBERSHIP

8. The PRC shall become a member of the bank in accordance with the provisions of this resolution from the day the secretary of the bank certified in writing that the prerequisites referred to in paragraph 7 of this resolution had been fulfilled.

II. Increase in Authorized Capital

9. The authorized capital of the bank shall be increased by 114,000 shares at \$10,000 per share, calculated at the gold content and relative purity of the dollar as of 31 January 1966.

10. The capital authorized in this resolution may only be subscribed by the PRC in accordance with the provisions of this resolution.

11. The increase in authorized capital shall become effective only after the membership of the PRC has entered into force in accordance with paragraphs 7 and 8 of this resolution.

* * *

Acceptance

Considering that the Government of the PRC has examined and verified the "Agreement Establishing the Asian Development Bank"; and considering that the board of governors of the bank has, in its Resolution No 176 adopted on 17 February 1986, decided to accept the PRC as a member of the bank in accordance with the provisions of that resolution;

The Government of the PRC hereby declares that the PRC shall, in accordance with the laws of the country, accept the above-mentioned agreement and resolution, and further declares that the PRC has taken all the necessary measures to ensure that the obligations set forth in the above-mentioned agreement and resolution can be fulfilled.

Wu Xueqian, foreign minister of the PRC,
Beijing, 3 March 1986

* * *

Legal Suggestion Note

The Government of the PRC on 28 November 1985 submitted its application to join the Asian Development Bank (hereinafter referred to as the bank). The board of governors of the bank, on 17 February 1986, adopted Resolution No 176, agreeing to accept the PRC as a member of the bank in accordance with the provisions of the said resolution.

In compliance with Subparagraph ii) of Paragraph 7 of Resolution No 176 of the board of governors of the bank, the Government of the PRC hereby submits this Legal Suggestion Note, and certifies that:

1. In accordance with the law of the PRC, Wu Xueqian, foreign minister of the PRC, has, on behalf of his government, signed the acceptance of the "Agreement Establishing the Asian Development Bank" and Resolution No 176 of the board of governors of the bank. The State Council of the PRC has authorized Chen Songlu, ambassador of the PRC to the Republic of the Philippines, to deposit the said acceptance with the bank on behalf of the Government of the PRC.
2. For the purpose of fulfilling the obligations set forth in the above-mentioned agreement and resolution, the State Council of the PRC has, on 3 March 1986, issued Circular No (86) 28 requesting various competent organs of the Government of the PRC to implement the "Agreement Establishing the Asian Development Bank" and Resolution No 176 of the board of governors of the bank. Enclosed is a copy of the said circular. The above-mentioned agreement and resolution shall become legally binding on the PRC on the day the PRC formally becomes a member of the bank, and their implementation shall be guaranteed by the Government of the PRC.

For the Director of the Treaty and Law
Department of the Ministry of Foreign
Affairs of the PRC, Xu Guangjian [6079
0342 1696],
Beijing, 3 March 1986

* * *

Mr Masao Fujioka
The President
Asian Development Bank
P.O. Box 789
Manila, The Philippines

Dear Mr President:

In accordance with Article 27 of the "Agreement Establishing the Asian Development Bank," the Government of the PRC appoints Chen Muhua, president of the People's Bank of China, as Chinese governor to the Asian Development Bank, and Li Peiqian [2621 1014 6870], member of the board of governors and head of the Foreign Affairs Bureau of the People's Bank of China, as alternate governor. The appointments shall enter into force from 11 March 1986.

Wu Xueqian, foreign minister of the PRC,
Beijing, 11 March 1986

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Letter Designating the Official Communications Entity

(86) ADB-01

Mr Masao Fujioka
The President
Asian Development Bank
P.O. Box 789
Manila, The Philippines

Dear Mr President:

I have been authorized to inform you that, in accordance with Clause 1, Article 38 of the "Agreement Establishing the Asian Development Bank," the Government of the PRC has designated the People's Bank of China as the official entity with which the PRC communicates with the Asian Development Bank. The bank may communicate with the People's Bank of China on any matter pertaining to the implementation of the Bank Agreement.

The correspondence address of the People's Bank of China is as follows:

Address: Sanlihe, Beijing, the PRC.

Cable: RENMINBANK

Telex: 22612 PBCHO CN

Chen Muhua, president of the
People's Bank of China,
Beijing, 11 March 1986

* * *

Letter Designating the Depository

(86) ADB-02

Mr Masao Fujioka
The President
Asian Development Bank
P.O. Box 789
Manila, The Philippines

Dear Mr President:

I have been authorized to inform you that, in accordance with Clause 2, Article 38 of the "Agreement Establishing the Asian Development Bank," the Government of the PRC has designated the People's Bank of China as the depository with which the Asian Development Bank may keep its holdings of the currency of the PRC as well as other assets of the bank.

We understand that the bank will accept this designation, and we affirm that the official depository may not be changed without the consent of the bank.

Chen Muhua, president of the
People's Bank of China,
Beijing, 11 March 1986

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CSO: 4005/335

ZHAO ZIYANG'S MESSAGE TO UN SPECIAL ANTIAPARTHEID COMMITTEE

Beijing PRC STATE COUNCIL BULLETIN in Chinese No 8, 10 Apr 86 pp 238-239

[Premier Zhao Ziyang's Message to the Chairman of the UN Special Committee Against Apartheid (21 March 1986)]

[Text] New York,

Chairman of the UN Special Committee Against Apartheid

Dear Mr Garba:

On this occasion of the "International Day for the Elimination of Racial Discrimination," allow me to extend, on behalf of the government and the people of the PRC, support and backing for the Special Committee Against Apartheid, and appreciation for the useful work done by the Special Committee Against Apartheid chaired by Your Excellency to rally world opinion in support of the just struggle of the people of South Africa.

In recent years, the mass movements of the people of South Africa against apartheid and racial discrimination have surged to unprecedented heights, and their just struggles have won more extensive sympathy and support from the international community. The UN General Assembly and Security Assembly have, on many occasions, adopted resolutions denouncing the South African authorities for their system of apartheid and for their ruthless oppression of the people of South Africa, and appealing for political, economic, and other sanctions from the international community against South Africa. Many countries and international organizations have also denounced the racist policies of the South African authorities. The obstinate stance of the South African authorities is becoming more unpopular. Their situation is very isolated. For the South African authorities, the only way out lies in complying with the just demand of the people of South Africa and the people of Africa and the world, relinquish their policy of apartheid, and quickly and unconditionally implement in an all-round way the relevant resolutions of the United Nations on the question of South Africa.

The Chinese Government and people have all along denounced the South African authorities for pushing their policy of racism. We resolutely support the people of South Africa in their struggle against apartheid and

racial discrimination and for basic human rights and racial equality. Although the struggles of the people of South Africa are still beset with difficulties, the situation is in their favor. We are convinced that with the energetic support of the United Nations and all justice-loving countries and peoples the world over, the people of South Africa have united all forces that can be united with and persisted in waging all forms of struggle, will win in the end.

Zhao Ziyang, premier of the
State Council,
21 March 1986

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DATE FILMED

10 June 1987